



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 15, 2022

IN THE MATTER OF:

Appeal Board No. 624845 A

PRESENT: RANDALL T. DOUGLAS, MEMBER

The claimant applied to the Appeal Board pursuant to Labor Law § 534 for a

reopening and reconsideration of Appeal Board Nos. 620540 and 620541, filed June 9, 2022, insofar as they dismissed and continued in effect the decisions of the Administrative Law Judge that sustained the monetary benefit determination ruling the claimant not entitled to receive regular unemployment benefits, effective March 23, 2020, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527, using the basic or

alternate base period, because the claimant did not work and earn wages in at least two calendar quarters of her base period and was not paid at least \$2,600.00 in wages in one of the calendar quarters of her base period; and reversed the decision of the Administrative Law Judge and ruled that the claimant's weekly Pandemic Unemployment Assistance (PUA) benefit rate is \$214.00 as stated in the initial determination and not \$504.00 as the Judge ruled.

Upon consideration of the application to reopen, after due notice to the parties, the Board has decided to reopen and reconsider its decision.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant filed a claim for benefits on April 3, 2020, with an effective date of March 23, 2020. Her basic base period ran from the fourth quarter of 2018 through the third quarter of 2019. Her alternate base period ran from the first quarter of 2019 through the fourth quarter of 2019.

During each of the quarters of her basic and alternate base period, the claimant had no earnings from employment. The claimant was self-employed as a language translator. In support of her application for PUA benefits, the claimant provided the Department of Labor with Schedule C of her 2019 federal income tax return. The net profit reported on Line 31 of this document was \$22,342.00. The claimant had earnings from self-employment in all four quarters of 2019. The claimant's most lucrative quarter of 2019 was the first quarter, in which she had net earnings of \$14,892.59.

OPINION: The credible evidence establishes that, during the basic and alternate base periods, the claimant did not work or have earnings from employment in any calendar quarter. In order to establish a valid original claim, a claimant must have earnings from employment in two or more calendar quarters during the base period and must have employment earnings of at least \$2,600.00 in at least one calendar quarter. The claimant has not met these earnings requirements. Accordingly, we conclude that the claimant is unable to establish a valid original claim using the basic or alternate base period.

Pursuant to Section 2102 (d) of the Coronavirus Aid, Relief and Economic Security (CARES) Act, the weekly benefit rate for claimants receiving Pandemic Unemployment Assistance (PUA) benefits is determined in accordance with the NY Labor Law Section 590 (5) and Section 625.6 of title 20 of the Code of Federal Regulations (CFR), and the minimum weekly benefit rate cannot be less than the minimum amount established by the US Department of Labor pursuant to Section 625.6 (b) of title 20 of the Code of Federal Regulations.

Pursuant to Labor Law § 590 (5) a claimant's weekly benefit amount shall be

one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, provided the claimant has remuneration in all four calendar quarters during the base period. For claimants paid remuneration in all four calendar quarters during the base period whose high calendar quarter remuneration during the base period is \$3,575 or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period by employers. For claimants paid remuneration in two or three calendar quarters during the base period, the weekly benefit shall be one twenty-sixth of the average remuneration paid in the two highest quarters paid during the base period, provided that a claimant whose high calendar quarter is \$4,000 or less but greater than \$3,575 shall have a weekly benefit amount of one twenty-sixth of such high calendar

quarter. For claimants paid remuneration in two or three calendar quarters during the base period and whose high calendar quarter remuneration during the base period is \$3,575 or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest quarter of the base period.

The credible evidence further establishes that the claimant filed her claim on April 3, 2020, with an effective date of March 23, 2020. The base period applicable to the claimant's PUA claim was the most recent tax year, which was the 2019 calendar year (see U.S. Department of Labor, Unemployment Insurance Program Letter No. 16-20, Change1, Attachment 1, § 12). The claimant's net

earnings from self-employment in 2019 totaled \$22,342.00, with self-employment earnings in each quarter of 2019, and high quarter earnings in the first quarter, when her net earnings were \$14,892.59. In Appeal Board No. 615899, we recognized that the U.S. Department of Labor has directed that, in calculating PUA benefit rates, states must treat employment wages and self-employment income the same as they treat earnings from covered employment (see U.S. Department of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1, Attachment 1, § 13). Under section 590 (5) of the Labor Law, a claimant's

benefit rate is calculated as one twenty-sixth of the claimant's high quarter earnings, rounded down to the nearest whole dollar. The maximum benefit rate on March 23, 2020 was \$504.00. Since \$14,892.59 divided by 26 is \$572.79, which is more than the maximum benefit rate, the claimant is entitled to the maximum benefit rate. Accordingly, we further conclude that the claimant's weekly PUA benefit rate is \$504.00.

**DECISION:** The decisions of the Appeal Board are rescinded.

The decisions of the Administrative Law Judge, insofar as appealed from, are modified as follows, and, as so modified, are affirmed.

In Appeal Board No. 624844A, the initial determination, holding the claimant eligible to receive Pandemic Unemployment Assistance (PUA) benefits, effective March 23, 2020, with a weekly PUA benefit rate of \$214.00, is modified to hold the claimant eligible to receive PUA benefits with a weekly PUA benefit rate of \$504.00, and, as so modified, is sustained.

In Appeal Board No. 624845A, the monetary benefit determination, ruling the claimant not entitled to receive benefits, effective March 23, 2020, on the

basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527, using the basic or alternate base period, because the

claimant did not work and earn wages in at least two calendar quarters of her base period and was not paid at least \$2,600.00 in wages in one of the calendar quarters of her base period, is sustained.

RANDALL T. DOUGLAS, MEMBER